FEDERATION REPORTS.

In Re LAND ACQUISITION BY THE STATE OF SELANGOR.

[Interpretation Tribunal Juris. (Sir Harold Willan, C.J. (Chairman), Pretheroe, J. and Haji Abdul Wahab bin Abdul Aziz, Dato Panglima Bukit Gantang, Mentri Besar, Perak (Members), May 11, 1950]

[Interpretation Tribunal Reference No. 1 of 1950]

Compulsory acquisition of alienated land by a State Government for a Federal purpose — Absence of requirement by the High Commissioner under clause 21 of the Federation of Malaya Agreement, 1948.

The Government of the State of Selangor commenced proceedings to acquire compulsorily certain land in the State needed by the War Department for a defence purpose, which is a purpose specified in the first column of the Second Schedule to the Federation of Malaya Agreement, 1948.

Objection was taken by the registered proprietors of the land that the High Commissioner had made no requirement to acquire the said land under clause 21 of the Agreement, and the absence of such requirement was admitted by the Attorney-General.

As this necessitated the construction of clause 21 of the Agreement, an Interpretation Tribunal was constituted under clause 153 thereof to decide the following question:

"Whether on the true construction of the Federation of Malaya Agreement, 1948, the Government of the State of Selangor was empowered to take proceedings for the compulsory acquisition of the said land for a defence purpose in the absence of any requirement by the High Commissioner so to do under clause 21 of the said Agreement."

Held, that no requirement having been made by the High Commissioner under clause 21 of the Federation of Malaya Agreement, 1948, to acquire the said land, the Government of the State of Selangor was not empowered to take proceedings for the compulsory acquisition of it for the purpose stated.

Cases referred to :—

(1) *Herron v. Rathmines and Rathgar Improvement Commissioners* (1892) A.C. 498 at. p. 523.

(2) *Hutton v. Attorney-General* (1927) 1 Ch. 427.

REFERENCE.

N. L. Cohen (Federal Counsel) for the Attorney-General.

B. J. P. Joaquim and *M. N. Cumaraswami* for the registered proprietors of the land.

The decision of the Interpretation Tribunal was delivered by :—

Willan, C. J. : — Clause 153 (3) of the Federation of Malaya Agreement, 1948, hereinafter in this decision referred to as "the Agreement", reads :—

"If any question involving the meaning, interpretation, construction or effect of any of the provisions of this Agreement shall arise in the course of any proceedings in a Court, the Court shall (unless such question shall previously have been decided by the Interpretation Tribunal) refer such question for the decision of the Interpretation Tribunal and, upon receipt of such decision, shall proceed to determine the matter before it in accordance therewith."

By *Gazette* Notification No. 254 in the Selangor Government *Gazette* of the 12th day of May, 1949, a declaration under section 6 (i) of the Federated Malay States Land Acquisition Enactment (Cap. 140) was made by the State Secretary, Selangor, that the land comprised in grant No. 10,031, being lot No. 971, in the mukim of Ampang, in the district of Kuala Lumpur, in the State of Selangor, was needed for the use of the War Department.

On the 6th of June, 1949, the Collector of Land Revenue, Kuala Lumpur, gave notice under sections 9 and 10 of the said Enactment that the Government of Selangor intended to take possession of the said land.

The High Court dismissed a motion brought by the registered proprietors of the said land to restrain the Collector of Land Revenue, Kuala Lumpur, from acquiring the said land.

The registered proprietors appealed against that dismissal to the Court of Appeal.

On the hearing of the appeal both parties thereto agreed that the said land is required for a defence purpose, which is a purpose specified in the first column of the Second Schedule to the Agreement.

The Federal Counsel, who appeared for the Collector of Land Revenue, Kuala Lumpur, on the appeal, admitted that there had been no requirement by the High Commissioner, under clause 21 of the Agreement, to acquire the said land. Upon this admission having been made, the Court of Appeal referred the following question to the Interpretation Tribunal :—

"Whether on the true construction of the Federation of Malaya Agreement, 1948, the Government of Selangor was empowered to take proceedings for the compulsory acquisition of the said land for a defence purpose in the absence of any requirement by the High Commissioner so to do under clause 21 of the said Agreement."

Having been appointed under clause 153 (2) of the Agreement, we, the Members of the Interpretation Tribunal, give our decision on the question referred to us.

The first column of item 100 in the Second Schedule to the Agreement lays down that the Federal Legislature has power to make laws with regard to the compulsory acquisition of land, but the second column of that item specifies that the executive authority with regard to the compulsory acquisition of land is the State authority in each Malay State, and the Settlement authority in each of the Settlements of Penang and Malacca.

That being so, the Federal Government has no executive authority to acquire land compulsorily anywhere in the Federation — it must rely on the appropriate State or Settlement authority.

Hence, in respect of the particular land with which we are concerned, the executive authority to acquire it compulsorily is the appropriate authority of the Government of the State of Selangor. That appropriate authority is the Mentri Besar of the State of Selangor with the approval of the Ruler in Council — *see* sub-section (i) section 3 of the Federated Malay States Land Acquisition Enactment (Cap. 140), which reads :—

"The Mentri Besar with the approval of the Ruler in Council may acquire any land whenever it is needed for a public purpose."

Prior to the coming into force of the Agreement that sub-section read :—

"The Resident may acquire any land whenever it is needed for a public purpose."

By the Transfer of Powers Ordinance, 1948, which is a law enacted by the Federal Legislative Council under clause 48 of the Agreement, that Council amended sub-section (i) of section 3 of the Land Acquisition Enactment (Cap. 140) by substituting for the word "Resident" the words "Mentri Besar with the approval of the Ruler in Council". This amendment was made in pursuance of the proviso to clause 86 of the Agreement, which reads :—

"Subject to the provisions of this Agreement, the executive authority of each Malay State shall extend to all matters save those set out in the first column of the Second Schedule to this Agreement: Provided that (except in so far as matters of policy common to any two or more of the States and Settlements are involved) any law made under clause 48 of this Agreement shall, to the extent stated in the second column of the said Second Schedule, confer executive authority on the Government of any Malay State or on the appropriate person or body, in any matter set out in the first column of the said Schedule."

Since the executive authority for compulsorily acquiring land in the State of Selangor is vested in the Mentri Besar with the approval of the Ruler in Council, how should proceedings be commenced when the Federal Government wishes to acquire land compulsorily in that State? The answer to that question is that proceedings can only be commenced under clause 21 of the Agreement, which reads :—

"The High Commissioner may, if he deems it necessary in the interests of the Federation that any land in a Malay State or Settlement should be acquired or reserved for any purpose connected with any matter specified in the first column of the Second Schedule to this Agreement, require the appropriate authority in the State or Settlement to acquire in a Malay State any alienated land or in a Settlement any land other than Crown land on behalf and at the expense of the Federation in accordance with the law for the time being in force dealing with the acquisition of land for public purposes, or to reserve, grant or lease any State or Crown land for the use of the Federation".

There is no provision for the High Commissioner to delegate his powers under that clause, nor would one expect to find any such provision because that clause lays down that the High Commissioner may act only "if *he* deems it necessary in the interests of the Federation".

Therefore, it is the High Commissioner, and the High Commissioner alone, who can make the requirement under that clause. Since the acquisition of land is an interference with private property, it is essential to comply strictly with the law governing compulsory acquisition — see *Herron v. Rathmines and Rathgar Improvement Commissioners*[1].

Considered from two points of view, it is reasonable that the requirement in clause 21 should emanate from the High Commissioner himself.

First, from the point of view of a State or Settlement Government. When a requirement is made by the High Commissioner, as it should be, the State or Settlement Government concerned can be certain that the High Commissioner has satisfied himself that the acquisition of the land is necessary in the interests of the Federation, and therefore the requirement to the particular State or Settlement to acquire the land compulsorily is not lightly or recklessly made. As to this the case of *Hutton v. Attorney-General*[2] is relevant.

That case deals with section 23 of the Defence Act, 1842, which provides, *inter alia*, that no land shall be acquired unless the necessity or expediency for acquiring it has first been certified by the lord lieutenant or two deputy lieutenants of the county in which the land is situated. At page 439 of that case, Tomlin, J., said :—

"I come, therefore, to the conclusion that the lord lieutenant or the deputy lieutenants under s. 23 have placed upon them not a judicial function but an executive or administrative function, intended to secure that the powers of this Act are not recklessly exercised; that for this purpose some responsible official not unconnected with military matters and familiar with the locality has to be reasonably satisfied by the evidence that the War Office may put before him, that the case is one where necessity or expediency requires the taking of the land . . . . . ."

That passage is apposite because, in our case, the land is required by the War Department.

Secondly, from the point of view of the proprietor of the land it is essential that the High Commissioner, and no one else, should make the requirement under clause 21 of the Agreement. By this means the proprietor can be certain that the High Commissioner has satisfied himself that it is necessary in the interests

of the Federation to acquire the land, and also the proprietor can be sure that any representations he may have made to the Federal Government against his land being compulsorily acquired have been considered by the High Commissioner.

It was sought to establish that there is dual authority in the High Commissioner and in a State or Settlement Government so that one or the other can acquire land for a federal purpose. To accede to such a proposition would mean that if a person or body, in this case the War Department, failed to satisfy the High Commissioner that the acquisition was necessary in the interests of the Federation, such person or body could approach the appropriate State or Settlement Government and attempt to persuade them to acquire the land independently of the High Commissioner. We reject that proposition because it does not accord with the true construction of clause 21 of the Agreement, and it would be bound to lead to confusion and friction between the Federal Government on the one hand, and State and Settlement Governments, on the other hand.

For these reasons we decide that no requirement having been made by the High Commissioner under clause 21 of the Agreement to acquire the land comprised in grant No. 10,031, lot No. 971, in the mukim of Ampang, in the district of Kuala Lumpur, in the State of Selangor, the Government of the State of Selangor, was not empowered to take proceedings for the compulsory acquisition of the said land for the purpose stated.

We think we should add that the Government of the State of Selangor, in proceeding to acquire this land compulsorily without a requirement to do so from the High Commissioner, did so in all good faith.

JAAFAR BIN HUSSAIN v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Pretheroe and Taylor, JJ.) April 26, 1950]

[F.M. — Criminal Appeal No. 13 of 1950]

Emergency Regulations 1948, Reg. 4(1)(a) — Whether charges of being in possession of arms and of ammunition should be tried together or separately — Whether where the charges are tried separately, evidence in support of one charge can be given in the trial of the other charge — Evidence Enactment, s. 6 — Criminal Procedure Code, s. 165(i).

In this case the appellant was charged with two offences, first with carrying a shot gun at Kuala Krau, Pahang, on the 5th of January, 1950, and secondly with carrying a hand-grenade at the same time and place. At the trial the learned trial Judge directed that the trial should proceed on the second charge only. On the trial of this second charge, evidence was given that the appellant was carrying a gun. The appellant was convicted. On appeal it is argued that the evidence that the appellant was carrying a gun should not have been admitted, because the appellant was being tried on the second charge only, namely, for carrying a hand-grenade.

Held, (1) that where the acts of carrying arms and ammunition are so connected together as to form one transaction the person so found carrying the arms and ammunition should be charged with both offences and tried at one and the same trial for both of them; (2) that where, as in this case, one of the charges is stayed and the other charge is proceeded with, the evidence touching the charge which has been stayed is admissible, as the facts are so connected with the facts on which the other charge is born as to form part of the same transaction; (3) that the evidence was rightly admitted in this case and therefore the appeal must be dismissed.

Cases referred to:—

(1) *R. v. Peckham* 25 Cr. App. R. 125.
(2) *Chong Kim Seng v. Public Prosecutor* (1949) M.L.J. 109.
(3) *R. v. Jones* 13 Cr. App. R. 86.
(4) *R. v. Davis* 26 Cr. App. R. 95.
(5) *Amrita Lal Hazra v. Emperor* I.L.R. 42 Cal. 957 at p. 983.
(6) *Queen Empress v. Vajiram* I.L.R. 16 Bom. 414 at p. 430.
(7) *R. v. Ellis* 6 B. & C. 145.

CRIMINAL APPEAL.

J. Skrine for the appellant.

N. L. Cohen for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Willan, C. J.:—In this case the appellant was charged with two offences, first, under Regulation 4(1)(a) of the Emergency Regulations, 1948, with carrying a shot gun at Kuala Krau, in the State of Pahang, on the 5th of January, 1950, and secondly, under Regulation 4(1)(b) with carrying a hand-grenade at the same time and place.

At the commencement of the trial, before the Assessors were chosen, the appellant claimed trial on both charges and, at the request of the prosecution, the learned trial Judge directed that the trial should proceed on the second charge only, *i.e.* on the charge relating to the hand grenade only. There is nothing on the record to indicate the reason why the prosecution applied to proceed on the second charge only, or why that application was granted.